IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

WP(C).No. 1831 of 2005(R)

CMA.126/2001 of D.C & SESSIONS COURT,TRIVANDRUM
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PETITIONER:
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1. P.T. LALITHAMBIKA UNNITHAN,
RESIDING AT STHANU ENCLAVE, VIKRAMPURI HILLS,
EAST PATTOM, KOWDIAR VILLAGE, THIRUVANANTHAPURAM.

2. SMT.RADHIKA UNNITHAN, 41 H, PTA NAGAR,
THIRUVANANTHAPURAM, NOW RESIDING AT 11433
TRVERNY PARKWAY, CHARLOTTE, N.C.28262, U.S.A.
REPRESENTED BY HER POWER OF ATTORNEY HOLDER,
SMT.SARASWATHY NAIR, RESIDING AT 41 H,
P.T.P. NAGAR, THIRUVANANTHAPURAM.

BY ADV. SRI.R.S.KALKURA

RESPONDENTS:
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1. C.P. VENUGOPAL, CATERING ASSISTANT
NO.5, BRDC (AF) SULUR, COMBATORE,
TAMIL NADU, RESIDING AT LEELA SADANAM,
KOWDIAR VILLAGE, THIRUVANANTHAPURAM.

2. SREEKALA, RESIDING AT NORTH OF
LEELA SADANAM, KOWDIAR VILLAGE,
THIRUVANANTHAPURAM.

BY ADV. SRI.G.S.REGHUNATH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.C.NO.1831 OF 2005

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE PLAINT IN O.S.NO.238/01**
EXT.P2	**TRUE COPY OF THE INJUNCTION APPLICATION, I.A.NO.1701/01**
EXT.P3	**TRUE COPY OF THE OBJECTION TO THE INJUNCTION APPLICATION FILED BY THE DEFENDANT.**
EXT.P4	**TRUE COPY OF THE COMMISSION REPORT WITH SITE PLAN.**
EXT.P5	**TRUE COPY OF THE THE PARTITION DEED NO.2372/68**
EXT.P6	**TRUE COPY OF THE PARTITION DEED NO.1625/78**
EXT.P7	**TRUE COPY OF THE PARTITION DEED NO.573/95**
EXT.P8	**TRUE COPY OF THE PARTITION DEED NO.1822/95**
EXT.P9	**TRUE COPY OF THE FIR.**
EXT.P10	**TRUE COPY OF THE LETTER NO.B1.205/2001**
EXT.P11	**TRUE COPY OF THE DOCUMENT NO.2611/1109**
EXT.P12	**TRUE COPY OF THE DOCUMENT NO.722/1114**
EXT.P13	**TRUE COPY OF THE SALE DEED.**
EXT.P14	**TRUE COPY OF THE PARTITION DEED NO.3110/763 DTD. 29-12-1973**
EXT.P15	**TRUE COPY OF THE PLAN.**
EXT.P16	**TRUE COPY OF THE ORDER DATED 6-4-01 IN I.A.NO.1701/2001 IN O.S.NO.238/01**
EXT.P17	**TRUE COPY OF THE JUDGMENT DATED 15-11-04 IN C.M.A.NO.126/01**

/True Copy/

PA to Judge.

M.SASIDHARAN NAMBIAR, J.

W.P.C.NO.1831 OF 2005 (R)

Dated this the 11 th day of December, 2006.

JUDGMENT

Petitioners are the plaintiffs and respondents are defendants in O.S.238/01 on the file of first Additional Munsiff Court, Trivandrum. Petitioners filed I.A.1701/01 under Order XXXIX Rule 1 of Code of Civil Procedure seeking an order of temporary injunction. After hearing respondents, learned Munsiff granted an order of temporary injunction. Respondents challenged that order before District Court, Trivandrum in C.M.A.126/01. Learned District Judge under Ext.P17 order set aside the order of the learned Munsiff and the vacated order of temporary injunction and directed the trial court to dispose the suit expeditiously. Ext.P17 order is challenged in this petition filed under Article 227 of Constitution of India.

2. While admitting the writ petition as per order dated 18.10.05 this court granted an order of injunction. Subsequently as per order dated 25.2.05, the order was modified by granting an order of stay of operation of Ext.P17 order. That order is prevailing.

3. Learned counsel appearing for petitioners and respondents were heard.

4. The question whether petitioners are entitled to the decree as sought for in O.S.238/01 is to be decided by the learned Munsiff on the evidence to be let in. Though learned District Judge set aside the order of temporary injunction granted by learned Munsiff, this court originally granted an order of injunction in favour of petitioner and thereafter granted an order of stay of the operation of the order of learned District Judge. In such circumstances, parties are directed to maintain status quo. Learned Munsiff is directed to dispose the suit untrammeled by any observation either in Ext.P17, passed by the learned District Judge or in Ext.16, passed by learned Munsiff. Learned Munsiff has to decide the suit only on the basis of the evidence to be let in, untrammeled by any observation in Ext.P16 or P17 or this judgment within five months from the date of receipt of copy of this judgment.

M.SASIDHARAN NAMBIAR,
JUDGE.

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